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I.C.E. Electric, Inc., Early Warning Security, Inc. and International Brotherhood of Electrical Workers, Local Union 317, AFL–CIO

East Coast Services, Inc. and International Brotherhood of Electrical Workers, Local 575, AFL–CIO and Christopher Lee Hutchinson and Erin Thomas Hutchinson. Cases 9–CA–38707 and 9–CA–40399

September 16, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a partial default judgment in this case on the ground that Respondent single employer, I.C.E. Electric, Inc. and Early Warning Security, Inc. (Respondent I.C.E.), and Respondent East Coast Services, Inc. (Respondent East Coast) have failed to file an answer to the compliance specification.

On June 11, 2003, the National Labor Relations Board issued a Decision and Order in Case 9–CA–38707,¹ that, among other things, ordered Respondent I.C.E., its officers, agents, successors, and assigns, to make whole Ronald D. Cole, Warren G. Spry, and Charles N. Taylor, for any loss of earnings and benefits they may have suffered as a result of Respondent I.C.E.’s unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On November 10, 2003, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing in full the provisions of the Board’s Order. The Court issued its Mandate on January 5, 2004.

On January 15, 2004, the Board issued a Decision and Order in Case 9–CA–40399,² that, among other things, ordered Respondent East Coast, its officers, agents, successors, and assigns, to make whole James Shope and Becky Reffitt for any loss of earnings and benefits they may have suffered as a result of the Respondent’s unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On April 22, 2004, the United States Court of Appeals for the Fourth Circuit issued its judgment enforcing the Board’s Order. The Court concurrently issued its mandate on that same date.

A controversy having arisen over the amounts of backpay due the discriminatees, on November 12, 2004, the Regional Director issued a compliance specification

and notice of hearing alleging the amounts due under the Board’s Orders.³ The compliance specification notified the Respondents that they should file a timely answer complying with the Board’s Rules and Regulations. The compliance specification alleges that, at all material times, Respondent I.C.E. and Respondent East Coast have been affiliated business enterprises with common officers, ownership, directors, management, supervision, and employees; have formulated and administered a common labor policy; have shared common premises and facilities; have interchanged personnel with each other; have commingled finances with each other; have interrelated operations in areas of purchasing, sales, accounting, insurance, training, banking, and bookkeeping; and have held themselves out to the public as a single integrated business enterprise. Accordingly, the compliance specification alleges that Respondents I.C.E. and East Coast constitute a single integrated business enterprise and a single employer within the meaning of the Act, and are jointly and severally liable for remedying the unfair labor practices described in the Board’s Decisions and Orders.

The compliance specification also alleges that, at all material times, Respondent Christopher Lee Hutchinson and Respondent Erin Thomas Hutchinson, individuals, have been doing business as Respondents I.C.E. and East Coast, as well as other business entities, including but not limited to, CAC Enterprises, Inc., Hutchinson Security Systems, Pro Lock and Key, Ohio Valley Security, AC Electrical Contractors, Early Warning Security, Advanced Sound and Communication, Peck Security Systems, Multi-Purpose Construction, R & C Enterprises of Ashland, Inc., East Coast Electric and Security, Inc., East Coast Security, East Coast, Inc., EC Electric, Mr. Electric, Manhattan Properties, Inc., and Pawnmart Incorporated. The compliance specification further alleges that Respondent Christopher Lee Hutchinson and Respondent Erin Thomas Hutchinson have failed to maintain distinct corporate and individual identities with Respondents I.C.E. and East Coast, as well as the other business entities described above.

Although properly served with a copy of the compliance specification, Respondent I.C.E. and Respondent East Coast have failed to file an answer. Respondent Christopher Lee Hutchinson and Respondent Erin Thomas Hutchinson filed an answer in their capacities as individuals.

In their answer to the compliance specification, Respondent Christopher Lee Hutchinson and Respondent Erin Thomas Hutchinson disputed the allegations against

¹ 339 NLRB 247.

² 341 NLRB No. 2.

³ An Order consolidating cases issued on November 15, 2004.

them to the extent that the compliance specification alleges that they are personally and individually liable for remedying the unfair labor practices described in the Board's Decisions and Orders. They did not dispute the accuracy of the backpay amounts set forth in the compliance specification or the premises on which they are based.

On December 10, 2004, the General Counsel filed with the Board a motion for partial default judgment against Respondent I.C.E. and Respondent East Coast, and memorandum in support, with exhibits attached. On December 20, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and in the compliance specification are therefore undisputed with respect to Respondent I.C.E. and Respondent East Coast.

Ruling on the Motion for Partial Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Partial Default Judgment, Respondent I.C.E. and Respondent East Coast, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for Respondent I.C.E.'s and Respondent East Coast's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true with respect to the allegations against them, and grant the General Counsel's Motion for Partial Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification as modified below, and we will order payment by the Respondent, I.C.E. Electric, Inc., Early Warning Security, Inc., and East Coast Services, Inc., a single employer, of those amounts to the discriminatees, plus interest accrued to the date of payment.⁴

⁴ The Order the Board issued in Case 9-CA-38707 required Respondent I.C.E. to pay \$816.12 to Ronald D. Cole and \$2,565.50 to

ORDER

The National Labor Relations Board orders that the Respondent, I.C.E. Electric, Inc., Early Warning Security, Inc., and East Coast Services, Inc., a single employer, Ashland, Kentucky, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

Ronald D. Cole	\$ 4,672
Warren G. Spry	\$ 6,240
Charles N. Taylor	\$ 5,344
Becky Reffitt	\$14,516
James Shope	\$13,200
TOTAL BACKPAY:	\$43,972

Dated, Washington, D.C. September 16, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

Warren G. Spry. See 339 NLRB at 249. As stated above, the Board's Order was enforced by the court of appeals. Nevertheless, in the final numbered paragraph of the compliance specification, these amounts were added to the backpay owed to Cole and Spry. Given that the Board's court-enforced Order already requires Respondent I.C.E. to pay these sums to Cole and Spry, it would not be appropriate to order payment a second time, and we have excluded these amounts from the backpay due the two employees.

As set forth in the compliance specification, although requested to do so, Respondent I.C.E. and Respondent East Coast have failed and refused to provide payroll records as required by the Board's Orders. Accordingly, the General Counsel reserves the right to amend the compliance specification, if necessary.

Respondents Christopher Lee Hutchinson and Erin Thomas Hutchinson may litigate in a separate proceeding whether they are personally liable for the backpay amounts owed.